

45



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,439	12/15/2000	Kevin B. Coleman	MPZ-001.02	9617
25181	7590	01/28/2005	EXAMINER	
FOLEY HOAG, LLP PATENT GROUP, WORLD TRADE CENTER WEST 155 SEAPORT BLVD BOSTON, MA 02110			AL HASHEMI, SANA A	
			ART UNIT	PAPER NUMBER
			2161	

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/738,439

Applicant(s)

COLEMAN, KEVIN B.

Examiner

Sana Al-Hashemi

Art Unit

2161

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 38-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 38-45 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is issued in response to applicant amendment filed 9/30/2004.
2. Claims 1, 6, and 18 were amended. No claims were deleted. Claims 34-45 were added.
3. Claims 1-18 as amended are pending. Claims 38-45 are restricted.

#### ***Election/Restrictions***

4. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-18, drawn to method of associating different criteria to products, classified in class 707, subclass 104.1.
  - II. Claims 38-45, drawn to a data structure method of generating a product set, classified in class 707, subclass 103Y.

Inventions I, and II, are related as combination and subcombination respectively.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particular subcombinations as claimed for patentability, and (2) that the subcombinations have utility by themselves or in other combinations (MPEP § 806.05(c)). In the instant case, the combination (I) as claimed does not require subcombination (II) as claimed because the method of associating different criteria to products does not require the specific data structure of generating a product set as claimed in subcombination II. The subcombination (II) has separate utility such as the method of structuring a data for generating a product set, which

Art Unit: 2161

does not require the combination (I). Therefore, the inventions are distinct; however, they could be usable together.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and the search required for I is not required for II, restriction for examination purposes as indicated is proper.

7. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

8. A telephone call was made to Kenneth F. Kozik on January 11, 2005 to request an oral election to the above restriction requirement, result in an election being made without traverse.

9. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

10. This Office action sets a one-month period for reply (restriction requirement), the applicant may obtain a two-month extension of time under 37 CFR 1.136(a) before being subject to a reduction of patent term adjustment under 35 U.S.C. 154(b)(2)(C)(ii) and 37 CFR 1.704(b).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-3 and 6-18 rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitt (US Patent No. 5,983,220) in view of Plutowski's admitted prior art (US Patent No. 6,473,851).

Regarding Claim 1, Schmitt discloses a method of associating different criteria on a web page to at least one product, comprising:

receiving option selection based on the different criteria (see column 6, lines 50-58, Schmitt);

assigning membership grades to the option selections (see column 8, lines 15-21, Schmitt);

relating the option selections to the products (see column 8, lines 32-39, Schmitt);

Schmitt does not explicitly disclose the step of forming a master membership grade for the products based on the option selection membership grades. However, Plutowski's admitted prior art teaches the step of forming a master membership grade (see Fig. 1C, as well as, column 23, lines 15-27, Plutowski). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the fuzzy logic processor of Schmitt, as suggested by Plutowski's admitted prior art to score and rank the user selection by forming master membership grades. A

Art Unit: 2161

skilled artisan would have been motivated to do so in order to learn the on-site browsing behavior based on a user profile and past purchasing history, which would have resulted in improved user response, and provided the closest and most accurate results. The combination of Schmitt and Plutowski's admitted prior art would have resulted in a combined system with enhanced performance and substantial expectation of success.

Regarding Claim 2, Schmitt in view Plutowski admitted prior art discloses a method wherein receiving options selections based on different criteria further comprises receiving an initial option selection and a submitted option selection (see column 9, lines 53-61, Schmitt).

Regarding Claim 3, the combination of Schmitt/Plutowski admitted prior art discloses a method wherein receiving option selections based on different criteria further comprises receiving at least one revised option selection (see column 9, lines 63-65, Schmitt).

Regarding Claim 5, the combination of Schmitt/Plutowski admitted prior art /Junkin discloses a method providing the different criteria using at least one check-box selection scheme (see Fig. 17, Schmitt).

Regarding Claim 6, the combination of Schmitt/Plutowski admitted prior art discloses a method further comprising updating the web page in response to receiving the user's option selections (see column 15, lines 15-18, Schmitt).

Regarding Claim 7, the combination of Schmitt/Plutowski admitted prior art discloses a method, wherein assigning membership grades to the option selections further includes, identifying a submitted option selection (see column 15, lines 7-9, Plutowski); and

assigning a greatest membership grade to the submitted option selection (see column 15, lines 9-11 ).

Art Unit: 2161

Regarding Claim 8, the combination of Schmitt/Plutowski admitted prior art discloses a method wherein assigning membership grades to the option selections further includes;

identifying an initial option selection(see column 16, lines 7- 9, Schmitt); and

assigning a second greatest membership grade to the initial option selection (see column16, lines 9-13, Schmitt).

Regarding Claim 9, the combination of Schmitt/Plutowski admitted prior art t discloses a method wherein assigning membership grades to the option selections further includes:

identifying at least one revised option selection occurring between an initial option selection and a submitted option selection (see column 16, lines 16-23, Schmitt<sup>1</sup>) and,

assigning respectively decreasingly valued membership grades to revised option selections based on order of occurrence (see Fig. 18, Schmitt).

Regarding Claims 10, 11, and 12, the combination of Schmitt/Plutowski admitted prior art discloses a method wherein assigning a greatest membership grade to the submitted option selection further includes assigning the submitted option selection a membership grade of 1.0, assigning a second greatest membership grade to the initial option selection further includes assigning the initial option selection a membership grade of 0.9. and assigning respectively decreasingly valued membership grades to revised option selections based on order of occurrence, further includes, assigning membership grades to revised option selections based on a decrementing schedule of membership grades, the schedule have a greatest value of 0.8 and decrementing in one-tenth intervals, and assigning a membership grade of 0.0 to all membership grade values less than 0.0. (see Fig. 1C, Plutowski).

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<sup>1</sup> The method of adding items corresponds to revised option.

Art Unit: 2161

Regarding Claims 13, and 14, the combination of Schmitt/Plutowski admitted prior art discloses a method further comprising incorporating membership grades for a redundant selection of an option selection into a single membership grade for the option selection, and the redundant membership grades for a redundant selection of an option selection, further comprises, recognizing only the highest membership grade for the option selection (see column 12, lines 17-33, Plutowski).

Regarding Claim 15, Schmitt Plutowski admitted prior art discloses a method further comprising providing the different criteria using at least one purchase decision question (see column 9, lines 51-61, Plutowski).

Regarding Claim 16, the combination of Schmitt/Plutowski admitted prior art discloses a method wherein forming a master membership grade for the at least one products based on the option selection membership grades, further includes, scaling the option selection membership grades, and, averaging the scaled membership grades (see column 15, lines 36-42, Plutowski).

Regarding Claim 17, Schmitt Plutowski admitted prior art discloses a method wherein scaling the option selection membership grades, further includes:

identifying membership grades for an initial option selection (see column 15, lines 50-53, Plutowski);

identifying membership grades for at least one revised option selection (see column 15, lines 54-58, Plutowski), and,

dividing the membership grades for the initial option selection and the at least one revised option selections by the number of criteria (see column 15, lines 59-64, Schmitt).



Art Unit: 2161

Regarding Claim 18, the combination of Schmitt/Plutowski admitted prior art discloses a method further comprising displaying the at least one products on the web page based on the least one master membership grade (see column 14, lines 33-39, Plutowski).

12. Claims 4, and 5, are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitt in view of Plutowski's admitted prior art and further in view of Junkin (US Patent No. 6,493,717)

Regarding Claim 4, the combination of Schmitt/Plutowski admitted prior art discloses all the limitation subject matter except the use method of using the radio button selection scheme. However Junkin discloses a method providing different criteria using at least one radio button selection scheme (see column 18, lines 26-33, Junkin). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the radio button selection as a method of selecting user options as alternative to the drop down menu with the motivation of providing users with all selection on one screen to chose from instead of drop downs which requires few more steps to reach the selection, since the radio button friendlier than the drop down and some developers prefer it over drop down selection.

***Response to Amendment***

Applicant's arguments filed 9/30/04 have been fully considered but they are not persuasive.

Applicant argues the prior art of Schmitt in view of Plutowski fails to teach the step of "forming a master membership grade for at least one product based on the option selection membership grade."

Examiner disagrees. Since the applicant did not provide sufficient description in the specification on what is the membership and master membership grade the Examiner best interpretation the membership is rating value and the master membership is the highest as defined in the summary of the invention. Referring to Fig. 20, column 19, lines 11-63, Schmitt clearly discloses the step of forming a selection with highest values based on a user input, which corresponds to the claimed limitation.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 2161

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

***Other Prior Art Made of Record***

1. Schmitt (US Patent No. 6,473,851) discloses a system for combining plurality of input control policies to provide a compositional output control policy.
2. Smith et al (US Patent No. 6,311,216) disclose method, computer program product, and system for client-side deterministic routing and URL lookup into a distributed cache of URLs
3. Takahashi (US Patent No. 5,005,1333) discloses system and method for automatically controlling a vehicle speed to a desired cruising speed.
4. Walker et al. (US Patent No. 6,108,639) discloses conditional purchase offer (CPO) management system for collectibles.

Art Unit: 2161

*Points of Contact*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to: Sana Al-Hashemi whose telephone number is (571) 272-4013.


The examiner can normally be reached on Monday - Friday from 8:00 AM to 4:30 PM.. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic, can be reached on (571) 272-4023. Any response to this office action should be mailed to: The Commissioner of Patents and Trademarks, Washington, D.C. 20231. Or telefax at phone number (703) 872-9306. For formal or draft communications, please label

"PROPOSED" or "DRAFT". Hand-delivered response should be brought to

Crystal Park II, 2121 Crystal Drive, 6<sup>th</sup> Floor Receptionist, Arlington, Virginia. 22202.

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Sana Al-Hashemi  
Patent Examiner  
Technology Center 2100  
January 11, 2005



ALFORD KINDRED  
PRIMARY EXAMINER